



Senate

General Assembly

File No. 523

January Session, 2019

Substitute Senate Bill No. 869

Senate, April 8, 2019

The Committee on Transportation reported through SEN. LEONE of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING RECOMMENDATIONS BY THE CONNECTICUT AIRPORT AUTHORITY REGARDING NONBUDGETED EXPENDITURES, THE CONNECTICUT AIRPORT AND AVIATION ACCOUNT AND THE SECURITY EXEMPTION UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 15-120dd of the general statutes
2 is repealed and the following is substituted in lieu thereof (*Effective*
3 *from passage*):

4 (b) Notwithstanding the provisions of subdivision (3) of subsection
5 (a) of this section, the board of directors may authorize the executive
6 director to make nonbudgeted expenditures of up to [five hundred
7 thousand] one million dollars without prior board approval (1) to
8 restore operations at any airport owned or operated by the authority, if
9 such airport or the equipment of such airport is damaged as a result of
10 a natural disaster or incurs a substantial casualty loss that results in an
11 unsafe condition, or (2) where the failure to act would result in a
12 disruption of airport operations. Not later than twenty-four hours after

13 the executive director makes such nonbudgeted expenditure, the
14 executive director shall provide notification to the chairperson or vice
15 chairperson of the board of the amount of, and reason for, such
16 expenditure.

17 Sec. 2. Section 13b-50c of the general statutes is repealed and the
18 following is substituted in lieu thereof (*Effective from passage*):

19 (a) There is established an account to be known as the "Connecticut
20 airport and aviation account" which shall be a separate, nonlapsing
21 account within the Grants and Restricted Accounts Fund established
22 pursuant to section 4-31c. The account shall contain any moneys
23 required by law to be deposited in the account. [Moneys in the account
24 shall be expended by the Commissioner of Transportation, with the
25 approval of the Secretary of the Office of Policy and Management, for
26 the purposes of airport and aviation-related purposes.]

27 (b) Notwithstanding the provisions of section 13b-61a, on and after
28 the effective date of this section, the Commissioner of Revenue
29 Services shall deposit into said account seventy-five and three-tenths
30 per cent of the amounts received by the state from aviation fuel
31 sources from the tax imposed under section 12-587.

32 (c) Moneys in said account shall be transferred, in an amount and
33 frequency as is mutually agreed to by the Commissioner of Revenue
34 Services and the executive director of the Connecticut Airport
35 Authority established pursuant to section 15-120bb, to an account
36 established by said authority, which shall expend such moneys for
37 airport and aviation-related purposes.

38 Sec. 3. Subdivision (19) of subsection (b) of section 1-210 of the
39 general statutes is repealed and the following is substituted in lieu
40 thereof (*Effective October 1, 2019*):

41 (19) Records when there are reasonable grounds to believe
42 disclosure may result in a safety risk, including the risk of harm to any
43 person, any government-owned or leased institution or facility or any

44 fixture or appurtenance and equipment attached to, or contained in,
45 such institution or facility, except that such records shall be disclosed
46 to a law enforcement agency upon the request of the law enforcement
47 agency. Such reasonable grounds shall be determined (A) (i) by the
48 Commissioner of Administrative Services, after consultation with the
49 chief executive officer of an executive branch state agency, with respect
50 to records concerning such agency; and (ii) by the Commissioner of
51 Emergency Services and Public Protection, after consultation with the
52 chief executive officer of a municipal, district or regional agency, with
53 respect to records concerning such agency; (B) by the Chief Court
54 Administrator with respect to records concerning the Judicial
55 Department; [and] (C) by the executive director of the Joint Committee
56 on Legislative Management, with respect to records concerning the
57 Legislative Department; and (D) by the executive director of the
58 Connecticut Airport Authority, with respect to records concerning the
59 Connecticut Airport Authority. As used in this section, "government-
60 owned or leased institution or facility" includes, but is not limited to,
61 an institution or facility owned or leased by a public service company,
62 as defined in section 16-1, other than a water company, as defined in
63 section 25-32a, a certified telecommunications provider, as defined in
64 section 16-1, or a municipal utility that furnishes electric or gas service,
65 but does not include an institution or facility owned or leased by the
66 federal government, and "chief executive officer" includes, but is not
67 limited to, an agency head, department head, executive director or
68 chief executive officer. Such records include, but are not limited to:

69 (i) Security manuals or reports;

70 (ii) Engineering and architectural drawings of government-owned
71 or leased institutions or facilities;

72 (iii) Operational specifications of security systems utilized at any
73 government-owned or leased institution or facility, except that a
74 general description of any such security system and the cost and
75 quality of such system may be disclosed;

76 (iv) Training manuals prepared for government-owned or leased

77 institutions or facilities that describe, in any manner, security
78 procedures, emergency plans or security equipment;

79 (v) Internal security audits of government-owned or leased
80 institutions or facilities;

81 (vi) Minutes or records of meetings, or portions of such minutes or
82 records, that contain or reveal information relating to security or other
83 records otherwise exempt from disclosure under this subdivision;

84 (vii) Logs or other documents that contain information on the
85 movement or assignment of security personnel; and

86 (viii) Emergency plans and emergency preparedness, response,
87 recovery and mitigation plans, including plans provided by a person
88 to a state agency or a local emergency management agency or official.

89 Sec. 4. Subdivision (24) of subsection (b) of section 1-210 of the
90 general statutes is repealed and the following is substituted in lieu
91 thereof (*Effective October 1, 2019*):

92 (24) Responses to any request for proposals or bid solicitation issued
93 by a public agency, responses by a public agency to any request for
94 proposals or bid solicitation, or any record or file made by a public
95 agency in connection with the contract award process, until such
96 contract is executed or negotiations for the award of such contract have
97 ended, whichever occurs earlier, provided the chief executive officer of
98 such public agency certifies that the public interest in the disclosure of
99 such responses, record or file is outweighed by the public interest in
100 the confidentiality of such responses, record or file;

101 Sec. 5. Subsection (d) of section 1-210 of the general statutes is
102 repealed and the following is substituted in lieu thereof (*Effective*
103 *October 1, 2019*):

104 (d) Whenever a public agency, except the Judicial Department, [or]
105 Legislative Department or Connecticut Airport Authority, receives a
106 request from any person for disclosure of any records described in

107 subdivision (19) of subsection (b) of this section under the Freedom of
 108 Information Act, the public agency shall promptly notify the
 109 Commissioner of Administrative Services or the Commissioner of
 110 Emergency Services and Public Protection, as applicable, of such
 111 request, in the manner prescribed by such commissioner, before
 112 complying with the request as required by the Freedom of Information
 113 Act. If the commissioner, after consultation with the chief executive
 114 officer of the applicable agency, believes the requested record is
 115 exempt from disclosure pursuant to subdivision (19) of subsection (b)
 116 of this section, the commissioner may direct the agency to withhold
 117 such record from such person. In any appeal brought under the
 118 provisions of section 1-206 of the Freedom of Information Act for
 119 denial of access to records for any of the reasons described in
 120 subdivision (19) of subsection (b) of this section, such appeal shall be
 121 against the chief executive officer of the executive branch state agency
 122 or the municipal, district or regional agency that issued the directive to
 123 withhold such record pursuant to subdivision (19) of subsection (b) of
 124 this section, exclusively, or, in the case of records concerning Judicial
 125 Department facilities, the Chief Court Administrator or, in the case of
 126 records concerning the Legislative Department, the executive director
 127 of the Joint Committee on Legislative Management, or, in the case of
 128 records concerning the Connecticut Airport Authority, the executive
 129 director of the Connecticut Airport Authority.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	15-120dd(b)
Sec. 2	<i>from passage</i>	13b-50c
Sec. 3	<i>October 1, 2019</i>	1-210(b)(19)
Sec. 4	<i>October 1, 2019</i>	1-210(b)(24)
Sec. 5	<i>October 1, 2019</i>	1-210(d)

TRA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill modifies the process for disbursing funds from the Connecticut Airport and Aviation Account, which has no fiscal impact. Currently, the funds in the account are first transferred to the Department of Transportation (DOT) and then to the Connecticut Airport Authority (CAA). The bill would require the funds to be directly transferred to the CAA.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 869*****AN ACT CONCERNING RECOMMENDATIONS BY THE CONNECTICUT AIRPORT AUTHORITY REGARDING NONBUDGETED EXPENDITURES, THE CONNECTICUT AIRPORT AND AVIATION ACCOUNT AND THE SECURITY EXEMPTION UNDER THE FREEDOM OF INFORMATION ACT.*****SUMMARY**

This bill modifies the Freedom of Information Act (FOIA) by (1) exempting from disclosure public agencies' responses to requests for proposals or bid solicitations and (2) allowing the Connecticut Airport Authority (CAA) executive director, rather than the Department of Administrative Services (DAS) commissioner, to determine whether the disclosure of CAA records would pose a safety risk.

The bill also modifies the process for disbursing funds from the Connecticut Airport and Aviation Account, requiring that account funds be transferred directly to CAA rather than transferred to CAA by the Department of Transportation (DOT) commissioner.

Lastly, the bill increases the maximum amount of nonbudgeted emergency expenditures that the board may authorize the CAA executive director to make without prior board approval.

EFFECTIVE DATE: Upon passage, except that the FOIA provisions are effective October 1, 2019.

§§ 3-5 — FOIA CHANGES***Disclosure of Records that Pose a Safety Risk***

Existing law exempts records from disclosure under FOIA if reasonable grounds exist to believe that their release could pose a safety risk, including harm to anyone or any government-owned or -leased institution, facility or equipment. Records exempt from

disclosure under this provision include security manuals, architectural and engineering drawings, security system operational specifications, training manuals, and emergency plans.

Under current law, the DAS commissioner must determine whether there are reasonable grounds for a safety risk for records held by any executive branch agency, including CAA. The law requires (1) agencies to notify DAS when they receive requests for such records and (2) DAS to consult with the agency head before making a final decision.

The bill instead allows the CAA executive director to determine if reasonable grounds exist to believe that disclosure of CAA records could pose a safety risk and makes a conforming change by exempting the CAA director from the requirement to notify DAS of requests for such records.

Requests for Proposals (RFPs) or Bid Solicitations

Existing law exempts from disclosure under FOIA responses to RFPs or bid solicitations issued by public agencies. The bill additionally exempts from disclosure responses public agencies make to RFPs or bid solicitations.

As under existing law, the agency's chief executive officer must certify that the public's interest in the response's confidentiality outweighs its interest in the response's disclosure. Such responses are exempt from disclosure only until the applicable contract is executed or contract negotiations have ended, whichever occurs earlier.

§ 2 — CONNECTICUT AIRPORT AND AVIATION ACCOUNT

The bill modifies the process for disbursing funds from the Connecticut Airport and Aviation Account (see BACKGROUND) to the CAA.

Current law requires DOT, with Office of Policy and Management (OPM) approval, to spend the account's resources for airport and aviation-related purposes. In practice, DOT, with approval from OPM, periodically transfers the funds to the CAA.

Under the bill, money in the account must be transferred directly to a CAA-established account and used for airport and aviation-related purposes. The amount and frequency of the transfers must be mutually agreed upon by the CAA executive director and the revenue services commissioner.

§ 1 — NONBUDGETED EXPENDITURES

The bill increases, from \$500,000 to \$1,000,000, the maximum amount of nonbudgeted expenditures the CAA board may authorize the executive director to make, without prior board approval, in certain emergency situations.

As under current law, the executive director may make such expenditures only (1) to restore operations at any CAA airport that suffers damage from a natural disaster or incurs a substantial casualty loss that creates unsafe conditions or (2) when failing to act would disrupt operations. Within 24 hours of making a nonbudgeted expenditure, the executive director must notify the board chairperson or vice chairperson of the expenditure's amount and purpose.

BACKGROUND

Connecticut Airport and Aviation Account

By law, the revenue commissioner must deposit into the account 75.3% of petroleum products gross earnings tax (PGET) revenue from aviation fuel sources (equivalent to 6.1% of aviation fuel sales) regardless of a law requiring that all PGET revenue be deposited in the STF. (By law, sales of most petroleum products, including aviation fuel, are subject to the 8.1% PGET (CGS § 12-587).) The remaining 24.7% of PGET revenue from aviation fuel (equivalent to 2% of aviation sales) is deposited in the STF.

Federal law requires that all airport revenue be used exclusively for airport-related purposes (49 U.S.C.A. § 47107(b)). Federal Aviation Administration (FAA) policy guidance clarifies that state revenue derived from taxes on aviation fuel is considered “airport revenue,” even if those taxes are of general applicability, and is therefore subject

to such restrictions (79 FR 66282). However, the restrictions do not apply to revenue from a tax or a portion of a tax that was in effect when the federal law took effect.

Related Bill

HB 5110, favorably reported by the Government Administration and Elections Committee, contains a provision allowing the CAA executive director, rather than the DAS commissioner, to determine whether the disclosure of CAA records would pose a safety risk.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/20/2019)